

## **REMARKS**

Applicant and the examiner spoke briefly by telephone on November 30, 2005 and again on December 16, 2005. The first of those discussions resulted in consideration of some proposed amendments. In the second of those discussions, the examiner indicated that he had spoken with a primary examiner and that the proposed amendments were acceptable and should result in allowance unless any new issues surfaced. On December 19, 2005, Applicant formerly submitted the amendments that had been proposed and discussed. With that in mind, the Office has now issued a Final Rejection that does not appear to raise any new issues, but rather reiterates, almost word-for-word, the rejection of November 17, 2005.

In light of these circumstances and the brief conversation between Applicant and the Examiner of last week, Applicant respectfully submits that its prior amendments and remarks are worthy of reconsideration. In particular, Applicant respectfully requests reconsideration in view of the following remarks. Applicant thanks the examiner, in advance, for considering this request.

Claims 1, 4-7, 9, 11-41 and 54-64 are pending in this application. Applicant hereby amends only claim 14 to delete "and" because the claim inadvertently had a double occurrence of the word "and".

**Independent Claims 1, 7, 9, 17, 29, and 31.** These claims currently stand rejected under Section 103 based upon Robinson (U.S. 5,999,899) in view of Walsh (U.S. 6,144,848). Reconsideration is respectfully requested.

Applicant's claimed invention(s), as set forth in the independent claims and the additional pending claims, is/are an incredibly unique system for distributing music to a cellular telephone and a portable wireless digital music device in the form of a cellular telephone. The presently claimed invention enables use of a single integrated mobile cellular telephone to select a music recording from a remote source, wirelessly receive the selected music recording from the remote source, store the music recording in the cellular telephone so that it can be carried about, play the stored music recording at any location, and make voice communications such as telephone calls.

Each independent claim expressly includes a limitation of a "cellular telephone". Additionally, claim 1 (system claim) includes a limitation that the cellular telephone is used to "wirelessly select and retrieve" a music recording from a remote facility. Each of claims 7, 9, 17 and 29 (device claims) include "an input for selecting a music recording" and "a receiver for wirelessly receiving the selected music recording after it is selected." Claim 31 (device claim) includes a limitation that a music recording in a memory of the cellular telephone is first "selected with said device and then wirelessly received by said receiver".

**Non-Analogous Art.** Applicant submits that Robinson and particularly Walsh are non-analogous art. The general scope of each, and particularly Walsh, is outside the field of endeavor of the presently claimed application. Additionally, neither Robinson nor Walsh is directed to the problem(s) addressed by the presently claimed invention.

**No *Primae Facie* Case of Obviousness.** Applicant also submits that the Patent Office has made no *primae facie* case of obviousness. First, there is no motivation in either Robinson or Walsh to combine the references. Second, there is no reasonable expectation that such a combination would be successful. Third, combining the references does not teach all of the claimed limitations.

As stated, Applicant's claimed invention(s), as set forth in the independent claims and the additional pending claims, is/are an incredibly unique system for distributing music to a cellular telephone and a portable wireless digital music device in the form of a cellular telephone. The presently claimed invention enables use of a single integrated mobile cellular telephone to select a music recording from a remote source, wirelessly receive the selected music recording from the remote source, store the music recording in the cellular telephone so that it can be carried about, play the stored music recording at any location, and make voice communications such as telephone calls.

The prior art of record does not teach or suggest the presently claimed invention. In particular, in complete contrast to the presently claimed invention, Robinson teaches only fixed-location applications for his audio compression techniques. Robinson does not teach a cellular telephone (or any mobile device) having a microphone or capable of voice communications. Additionally, Robinson does not teach using a cellular telephone, or any device for that matter, to select a music recording from a remote source and then wirelessly receive the selected music recording from the remote source. Adding Walsh's teachings to Robinson, even assuming Walsh can properly be combined with Robinson (not conceded), does not result in the presently claimed invention.

**Dependent Claims.** Applicant submits that the dependent claims are allowable by virtue of their allowance from an allowable base claim and also in view of the additional limitation(s) set forth in each dependent claim. While applicant believes each dependent claim is allowable for these reasons, Applicant provides the following specific comments on selected dependent claims.

**MPEG/mp3.** Those dependent claims directed to an mpeg or mp3 format (such as claims 11, 12, 13, 19, and 20) are rejected under Section 103 based upon a combination of Robinson, Walsh and Steele, with the examiner noting that Steele teaches mp3. Applicant traverses this rejection and points out that Robinson appears to expressly teach away from mp3 and seeks an alternate compression format to mp3. Applicant submits that it is not proper to combine a reference teaching mp3 with a reference that is expressly teaching away from mp3.

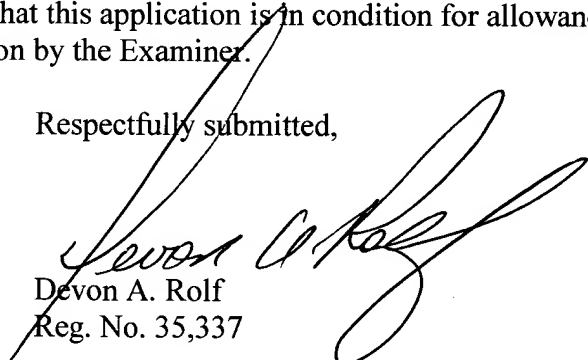
**Wirelessly receiving and displaying artist/title information.** Those dependent claims directed to displaying data indicative of an artist or title during playback of a recording (such as claims 14, 15, 16, 21, 34 and 63) have been rejected under Section 103 based upon a combination of Robinson, Walsh and Buchheim. Applicant traverses this rejection. These claims include a limitation clearly not taught or suggested in the cited art, namely, wirelessly receiving at the device at least one of the title and artist.

**Online account.** Dependent claims 28 and 39 are directed to downloading music from an online account, at a remote server, associated with the device or a user of the device. Dependent claims 28 and 39 have been rejected under Section 103 based upon a combination of Robinson and Walsh. Applicant traverses this rejection. The reference to an "account" in Walsh, upon which the examiner relies (at Col. 10, line 14), concerns "invoicing the user and charging payment against an account or credit card". That teaching in Walsh of a financial account has nothing to do with the claimed online user account from which a user downloads a selected music recording.

**Music recording wirelessly downloaded to cellular telephone available to a personal computer.** Dependent claim 55 is directed to further making a music recording that is wirelessly selected and retrieved from a cellular telephone "available for download to a personal computer associated with a user of the cellular telephone." This claimed feature of applicant's invention is clearly not taught or suggested by the art of record and this claim is not substantively addressed in the Final Office Action.

Applicant submits that this application is in condition for allowance and respectfully requests reconsideration by the Examiner.

Respectfully submitted,



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